

**STATE OF NEW YORK
SUPREME COURT: COUNTY OF NIAGARA**

SHELLY R. COOPER,
County of Erie
State of New York

SUMMONS

Plaintiff,

v.

Index No.: _____

NIAGARA FALLS CITY SCHOOL DISTRICT,
630 66th Street
Niagara Falls, NY 14304

Child Victims Act Proceeding
22 NYCRR 202.72

FRANK CARTER,
8521 Porter Road, Apt. 18
Niagara Falls, NY 14304-1628

Defendants.

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney(s) within twenty (20) days after the service of this summons, exclusive of the day of service [or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York]; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Niagara County is designated as the place of trial on the basis of the residence and place of business of the defendants.

Dated: October 18, 2019
Hamburg, New York


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**STATE OF NEW YORK
SUPREME COURT: COUNTY OF NIAGARA**

SHELLY R. COOPER,

Plaintiff,

COMPLAINT

v.

Index No.:

NIAGARA FALLS CITY SCHOOL DISTRICT and

FRANK CARTER,

Defendants.

Plaintiff, SHELLY R. COOPER, by her attorneys Chiacchia & Fleming, LLP, brings this action against NIAGARA FALLS CITY SCHOOL DISTRICT and FRANK CARTER, and alleges, on personal knowledge as to herself and on information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that each Defendant either resides in New York or conducts or, at relevant times conducted, activities in New York that give rise to the claims asserted herein.

2. Venue for this action is proper in the County of Niagara pursuant to CPLR 503 in that one or more Defendant resides in this County and a substantial part of the events or omissions giving rise to the claims asserted herein occurred here.

3. This action is brought pursuant to CPLR § 214-G, as added by the New York State Child Victims Act, which has revived claims of child sexual abuse for a period of one year beginning on August 14, 2019, six months after the effective date of the section (February 14,

2019). This action is timely.

PARTIES

4. Plaintiff SHELLY R. COOPER, ("Plaintiff"), is an individual residing in Erie County, New York.

5. Defendant NIAGARA FALLS CITY SCHOOL DISTRICT ("NFCSD") was and continues to be a municipal entity and educational institution existing by the laws of the State of New York.

6. Defendant FRANK CARTER ("CARTER") was a teacher and employee of Defendant NFCSD at all relevant times and events herein.

7. At all relevant times and events, SHELLY R. COOPER was a student of Defendant NFCSD.

FACTS COMMON TO ALL CLAIMS

8. At all relevant times and events, Defendant CARTER was plaintiff's social studies teacher for Defendant NFCSD, and therefore an authority figure with direct control over plaintiff's successes or failures in school.

9. Upon information and belief, during all times relevant to the allegations set forth herein, Defendant CARTER was under the direct supervision, employ, and /or control of the NFCSD.

10. Through his positions at, within, or for Defendant NFCSD, Defendant CARTER was put in direct contact with Plaintiff, a student at NFCSD. Defendant CARTER was assigned to teach her. It was under these circumstances that Plaintiff came to be under the direction and control of Defendant CARTER, who used his position of authority and trust over Plaintiff to have unpermitted sexual contact with Plaintiff.

11. On numerous occasions, during the years from approximately 1976 through 1977, while Plaintiff was a minor, Defendant CARTER, while acting as a teacher, instructor, coach, counselor, trustee, director, officer, employee, agent, servant and/or volunteer of the Defendant NFCSD, sexually assaulted, sexually abused and/or had unpermitted sexual contact with Plaintiff in violation of the laws of the State of New York. The sexual abuse, sexual harassment and sexual contact occurred repeatedly for several months, beginning when Plaintiff was approximately 13 years old.

12. Defendant NFCSD knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Defendant CARTER who sexually assaulted, sexually abused, sexually harassed and had unpermitted sexual contact with Plaintiff.

13. Defendant NFCSD had the responsibility to supervise and/or direct teachers teaching at Defendant NFCSD, and specifically, had a duty not to aid a pedophile such as Defendant CARTER, by assigning, maintaining and/or appointing him to a position with access to minors.

14. All Defendants, individually, jointly and/or severally, violated various New York statutes, including, but not limited to N.Y. Soc. Serv. Law §§ 413 and 420, which require school officials and teachers to report suspected cases of child abuse and impose liability for failure to report.

15. Plaintiff suffered personal physical and psychological injuries and damages as a result of Defendant CARTER's actions, as well as other damages related thereto, as a result of her childhood sexual abuse.

16. As a direct result of the Defendants' conduct described herein, Plaintiff

suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, problems sleeping, concentrating, low self-confidence, low self-respect, low self-esteem, feeling of worthlessness, feeling shameful, and embarrassed, feeling alone and isolated, losing faith in God, struggling with alcohol problems, feeling helpless and hopeless, problems with sexual intimacy, relationship problems, trust issues, feeling confused and angry, the feeling that the good things have been ruined, feeling sad and depressed, feeling anxiety, having panic attacks, crying, feeling dirty, used, and damaged, feeling suicidal, having flashbacks, feeling that her innocence was stolen, and feeling that her life was ruined. Plaintiff was prevented and will continue to be prevented from performing her normal daily activities and obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and, on information and belief, has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Defendant CARTER's sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm she suffered as a result.

CAUSES OF ACTION**FIRST CAUSE OF ACTION****Negligent Hiring/Retention/Supervision/Direction**

17. Plaintiff repeats and realleges each and every allegation set forth in the foregoing as if fully set forth herein.
18. The sexual abuse of children by adults, including teachers, is foreseeable.
19. By establishing, staffing, and/or operating Niagara Falls City Schools, encouraging the enrollment and instruction of Plaintiff in Niagara Falls City Schools, accepting her as a student, and holding Niagara Falls City Schools out to be a safe environment for learning

and engaging in youth activities, Defendant NFCSD entered into an express and/or implied duty to provide a reasonably safe environment for Plaintiff and assumed the duty to protect and care for her.

20. Defendant NFCSD negligently hired, retained, directed, and supervised Defendant CARTER when they knew or should have known that he posed a threat of sexual abuse to children.

21. Defendant NFCSD knew or should have known of Defendant CARTER is propensity for the conduct which caused Plaintiff's injuries prior to the injuries' occurrence.

22. Defendant CARTER sexually assaulted, sexually abused and/or had unpermitted sexual contact with Plaintiff on Defendant NFCSD's premises, including in the class room.

23. Defendant NFCSD was put on notice of Defendant CARTER's improper and inappropriate actions with Plaintiff, having subjected the Plaintiff and CARTER to questioning about the nature of their relationship.

24. Defendants owed a duty of care to all persons, including Plaintiff, who were likely to come within the influence of Defendant CARTER in his role as a teacher, instructor, coach, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Defendant CARTER did not abuse his authority as a teacher, coach, instructor, counselor, trustee, director, officer, employee, agent, servant and/or volunteer to injure minors by sexual assault, battery, and/or abuse.

25. At all times material hereto, Defendants' actions were willful, wanton, malicious, reckless and/or outrageous in their disregard for the rights and safety of Plaintiff.

26. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

27. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative, for compensatory damages, and for punitive damages, together with interest and costs.

SECOND CAUSE OF ACTION
Negligence/Gross Negligence

28. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

29. Defendants knew, or were negligent in not knowing, that Defendant CARTER posed a threat of sexual abuse to children.

30. The acts of Defendant CARTER described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his employment, appointment, and/or agency with the Defendant NFCSD.

31. Defendants owed Plaintiff, at the relevant times a minor, a duty to protect her from Defendant CARTER's sexual deviancy, both prior to and/or subsequent to Defendant CARTER's misconduct.

32. Defendants' willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.

33. Defendant NFCSD:

- a. gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others;
- b. failed adequately to supervise the activities of Defendant CARTER;
- c. permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or

grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, upon premises or with instrumentalities under their control; and

- d. allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

34. At all times material hereto, with regard to the allegations contained herein,

Defendant CARTER was under the direct supervision, employ and/or control of Defendant NFCSD.

35. At all times material hereto, Defendants' actions were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

36. As a direct and/or indirect result of said conduct, Plaintiff has suffered the injuries and damages described herein.

37. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to the Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

**THIRD CAUSE OF ACTION
Breach of Fiduciary Duty**

38. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

39. Through his positions at the Defendant NFCSD, Defendant CARTER was put in direct contact with Plaintiff, then a minor student at Niagara Falls City Schools, specifically being assigned to teach her lay academic subjects. It was under these circumstances that Plaintiff came to be under the direction and control of Defendant CARTER, who used his

position of authority and trust over Plaintiff to sexually assault, sexually abuse and sexually harass her.

40. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and all the Defendants herein.

41. Pursuant to their fiduciary relationship, Defendants were entrusted with the well-being, care, and safety of Plaintiff.

42. Pursuant to their fiduciary relationship, Defendants assumed a duty to act in the best interests of Plaintiff.

43. Defendants breached their fiduciary duties to Plaintiff.

44. At all times material hereto, Defendants' actions and/or inactions were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff.

45. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

46. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

**FOURTH CAUSE OF ACTION
Breach of Non-Delegable Duty**

47. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

48. Plaintiff, when she was a minor, was placed in the care of Defendant NFCSD for the purposes of, *inter alia*, providing plaintiff with a safe environment to receive a lay education, training, guidance and/or counseling. There existed a non-delegable duty of trust between

Plaintiff and Defendant NFCSD.

49. Plaintiff was a vulnerable child when placed within the care of the Defendant NFCSD.

50. As a consequence, the Defendant NFCSD was in the best position to prevent Plaintiff's abuse, and to learn of Defendant CARTER's repeated sexual abuse of Plaintiff and stop it.

51. By virtue of the fact that Plaintiff was sexually abused as a student, Defendant NFCSD breached their non-delegable duty to Plaintiff.

52. At all times material hereto Defendant CARTER was under the direct supervision, employ and/or control of the Defendant NFCSD.

53. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

54. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

**FIFTH CAUSE OF ACTION
Fraudulent Concealment**

55. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

56. Defendant NFCSD allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

57. Defendant NFCSD knew or should have known of Defendant CARTER's propensity for the conduct which caused Plaintiff's injuries prior to the injuries' occurrence.

58. Defendant NFCSD had a duty to report any reasonable suspicion of child abuse.

59. Defendant NFCSD owed a duty of care to all persons, including Plaintiff, who were likely to come within the influence of Defendant CARTER in his role as a teacher, instructor, coach, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Defendant CARTER did not abuse his authority as a teacher, instructor, coach, counselor, trustee, director, officer, employee, agent, servant and/or volunteer to injure minors by sexual assault, battery, and/or abuse.

60. Defendant NFCSD breached their duty by knowingly and willfully failing to report reasonable suspicion of abuse by Defendant CARTER of children in their care.

61. Defendant NFCSD breached their duty by knowingly and willfully failing to disclose reasonable suspicions of abuse by Defendant CARTER of children in their care to current or prospective students.

62. By knowingly and willfully failing to inform other current and prospective students of the abuse of Defendant CARTER, Defendant NFCSD intended to defraud other current and prospective students.

63. When Plaintiff chose to attend Niagara Falls City School, she reasonably relied upon the Defendant NFCSD's representation that Defendant NFCSD would look out for Plaintiff's well-being, care, and safety.

64. While attending Niagara Falls City Schools, Plaintiff was sexually assaulted, sexually abused, sexually harassed and had unpermitted sexual contact by Defendant CARTER and has suffered injuries and damages described herein.

65. At all times material hereto, said Defendants' actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

66. As a direct result of Defendants' conduct, Plaintiff has suffered the injuries and damages described herein.

67. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

SIXTH CAUSE OF ACTION
Negligent Infliction of Emotional Distress

68. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

69. As described aforesaid, the actions of Defendants, their predecessors and/or successors, agents, servants and/or employees were conducted in a negligent and/or grossly negligent manner.

70. Defendants' actions endangered Plaintiff's safety and caused her to fear for her own safety.

71. As a direct and proximate result of Defendants' actions, which included but were not limited to, negligent and/or grossly negligent conduct, Plaintiff suffered the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

72. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

SEVENTH CAUSE OF ACTION
Intentional Infliction of Emotional Distress

73. Plaintiff repeats and realleges each and every allegation set forth in the foregoing

paragraphs as if fully set forth herein.

74. During the time period from approximately 1976 through 1977, Defendants NFCSD allowed Defendant CARTER unrestricted access to Plaintiff and willfully and/or intentionally ignored suspicious behavior and/or complaints against Defendant CARTER of sexual assault, sexual abuse and sexual contact.

75. During the time period referenced above, Defendants NFCSD willfully and/or intentionally ignored Plaintiff's safety by requiring Plaintiff to be under the supervision of Defendant CARTER by herself before, during and after school, including on school-sanctioned activities.

76. Defendant NFCSD was deliberately indifferent to the risk of sexual assault, sexual abuse, and sexual contact posed to Plaintiff by being alone with Defendant CARTER.

77. Defendant NFCSD willfully and/or intentionally created a hostile and unsafe school environment that no child would be able to tolerate.

78. Defendant NFCSD, in order to avoid embarrassment, scandal, and negative publicity, intended to cause Plaintiff shame, humiliation and extreme emotional distress so she would stay silent, and not report the abuse.

79. Defendant NFCSD behaved in a manner toward Plaintiff that was so outrageous as to exceed all reasonable bounds of decency.

80. Defendant NFCSD knew with substantial certainty or should have known that their behavior would cause Plaintiff to be a victim of sexual assault, sexual abuse and sexual contact.

81. Defendant NFCSD knew with substantial certainty or should have known that their behavior would cause severe emotional distress to Plaintiff.

82. The foregoing acts of Defendants caused Plaintiff physical, mental and emotional distress.

83. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

EIGHTH CAUSE OF ACTION
Breach of Duty *in Loco Parentis*

84. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

85. Plaintiff when she was a minor was entrusted by her parents to the control of Defendant NFCSD for the purposes of *inter alia*, providing Plaintiff with a lay education. Defendant NFCSD owes – and owed -- a duty to students entrusted to them to adequately supervise them to prevent foreseeable injuries to their students. As a result, Defendant NFCSD owed a duty to Plaintiff *in loco parentis*.

86. Defendant NFCSD breached their duty *in loco parentis*.

87. At all times material hereto, said Defendants' actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

88. As a direct result of Defendants' conduct, Plaintiff has suffered the injuries and damages described herein.

89. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

NINTH CAUSE OF ACTION
Breach of Statutory Duty to Report Abuse under Soc. Serv. Law §§ 413, 420

90. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

91. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420, Defendant NFCSD had a statutorily imposed duty to report reasonable suspicion of abuse of children in their care.

92. Defendant NFCSD breached that duty by knowingly and willfully failing to report reasonable suspicion of abuse by Defendant CARTER of children in their care.

93. As a direct and/or indirect result of said conduct, Plaintiff has suffered injuries and damages described herein.

94. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

TENTH CAUSE OF ACTION
Debts for Willful and Malicious Injury Nondischargeable

95. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

96. Pursuant to Section 523(a)(6) of the Bankruptcy Code, any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity" is nondischargeable.

97. Defendant NFCSD allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

98. Defendant NFCSD breached their duty by knowingly and willfully failing to report reasonable suspicion of abuse by Defendant CARTER of children in their care.

99. Defendant NFCSD knowingly, willingly, and intentionally failed to report reasonable suspicion of abuse by Defendant CARTER of children in their care.

100. Defendant NFCSD's intentional act of nondisclosure allowed Defendant CARTER to continue abusing children in Defendant NFCSD's care, an injury that Defendant NFCSD was substantially certain would occur.

101. This intentional act necessarily produced the harm that resulted.

102. Defendant NFCSD's actions endangered Plaintiff's safety and caused her to fear for her own safety.

103. As a direct and proximate result of Defendant NFCSD's actions, which included but were not limited to, negligent and/or grossly negligent conduct, Plaintiff suffered the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

104. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

WHEREFORE, plaintiff respectfully requests judgment against Defendants herein in sums which exceed the jurisdictional limit of all lower courts which would otherwise have jurisdiction in this action, including compensatory damages, punitive damages, pre-judgment interest to the extent permitted by law; costs, disbursements and fees of this action, including attorneys' fees, to the extent permitted by law; and any other relief as the Court deems just and proper.

Dated: October 18, 2019
Hamburg, New York



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